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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/043,406  
Filing Date: March 18, 1998  
Appellant(s): O'BRIEN ET AL.

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Raymond Y. Mah  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5/14/08 appealing from the Office action mailed 1/9/08.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,608,446

CARR et al

3-1997

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 53-57 and 61-64, 66-67 are rejected under 35 U.S.C. 102(e) as being anticipated by Carr et al (US 5,608,446).

As per claims 53, Carr et al discloses:

an input for receiving a service request for a composite service, (Col. 5, lines 19-25, keyboard/monitor, and input/output interface, w/ col. 20, lines 14-21, shows user input for a request to switch to a high speed link);

Processing means for processing the composite service request, (Col. Col. 9, lines 61-64, service provider uses system to initiate a request);

negotiation means for use in establishing conditions applicable to provision, by one or more other agents in said multi-agent system, of one or more component processes involved in provision of the composite service, said negotiation means being adapted to assemble said conditions proactively by negotiation prior to receipt of said composite service request, (Col. 9, line 67-Col. 10, line 15, providing negotiations in order to allocated bandwidth without causing overload conditions, where the agents are represented by the plurality of service providers);

an up-datable data store/means to access said up-datable data store for storing said conditions when established and assembled, (Col. 9, lines 45-64, shows database works in conjunction with the negotiation means that includes the bandwidth capacity of each of the RF data channels of associated modulators, and that service providers are provided with an ongoing update of channel availability for each of the high speed RF channels available through modulators, and therefore, this means that at some point in time, an update must occur before a request is made since the updates are ongoing, and continuously occur throughout the entire process. Since updates are part of the negotiation process, this means that negotiations take place before a request is made in Carr et al as described by the "negotiation means" limitation above);

an output for providing a response to the composite service request, said response comprising a n indication of availability of the requested composite service, (Col. 15, lines 19-25, input/output interface, w/ col. 10, lines 21-26, control processor mediates requests, w/ col. 25, line 5-Col. 26, line 4, output transferred or source to destination);

where the processing means is adapted to process a composite service request by accessing one or more of the previously established conditions, for supply of component processes by said one or more other agents, in the data store, processing the request using the one or more established conditions and producing said response, (Col. 9, lines 5-15, checks database to determine if bandwidth capacity is available for the request, w/ Col. 9, lines 60-67, assigning a specified bandwidth to accommodate data to be transmitted from the service provider to the user).

As per claims 54/55, Carr et al discloses:

Wherein one or more of said established conditions has an associated expiry time after which it is no longer applicable/Wherein the processing means is adapted to detect an expired or undefined condition in the data store, which condition is applicable to a component process used in the provision of the requested composite service, and to trigger the negotiation means to establish a substitute condition, (Col. 9, lines 53-62, after expiration is represented by outside of the given period of time for a specified bandwidth).

As per claim 56, Carr et al discloses:

means to access said data store for storing data related to services offered by the agent and to one or more entities which have an interest in receiving information relating to one or more of said services, together with means to transmit information based on said data related to services to the one or more entities which have an interest, (Col. 9, lines 45-49, shows a database that works in conjunction with the negotiation means).

As per claim 57, Carr et al discloses:

which further comprises initiation means to initiate one or more component processes in provision of a requested composite service, (Col. Col. 9, lines 61-64, service provider uses system to initiate a request);

As per 61, Carr et al discloses:

Establishing conditions applicable to provision, by one or more other agents in said multi-agent system, of one or more component processes in a composite service,

proactively by negotiation prior to receipt of a request for said composite service, (Col. 9, line 67-Col. 10, line 15, providing negotiations in order to allocated bandwidth without causing overload conditions, in this case, the negotiations establishes conditions without going into overload, where the agents are represented by the plurality of service providers);

Accessing an up-datable data store and storing said component process supply conditions once established, (Col. 9, lines 45-64, shows database works in conjunction with the negotiation means that includes the bandwidth capacity of each of the RF data channels of associated modulators, and that service providers are provided with an ongoing update of channel availability for each of the high speed RF channels available through modulators, and therefore, this means that at some point in time, an update must occur before a request is made since the updates are ongoing, and continuously occur throughout the entire process. Since updates are part of the negotiation process, this means that negotiations take place before a request is made in Carr et al as described by the “establishing conditions...prior to receipt” limitation above);

subsequently receiving a request for said composite service, (col. 20, lines 14-21, shows user input for a request to switch to a high speed link, and col. 9, lines 60-67, initiate a request)

Processing said composite service request by:

a)accessing one or more of said previously established conditions, for component process supply in the data store, (Col. 9, lines 5-15, checks database to determine if bandwidth capacity is available for the request, w/Col. 9, lines 45-49, shows database works in conjunction with the negotiation means); and

b)providing a response to the composite service request, said response comprising an indication of availability of the requested composite service dependent upon whether said one or more established conditions for component process supply is met, (Col. 9, lines 60-67, assigning a specified bandwidth to accommodate data to be transmitted from the service provider to the user).

As per claim 62, Carr et al discloses :

wherein one or more of said established conditions for the component process supply stored in said data store is applicable until advent of an expiry time associated with said one or more conditions, (Col. 9, lines 53-62, after expiration is represented by outside of the given period of time for a specified bandwidth).

As per claim 63, Carr et al discloses :

further comprising the step, responsive to receipt of said composite service request, of finding whether any conditions for provision of component processes in said service are expired or undefined and substituting a substitute condition in the event that any such condition is found, (Col. 9, lines 53-56, w. col. 10, lines 1-15, update of channel availability (which includes bandwidth capacity) to prevent overload conditions, where bandwidth allocation is assigned for a specified bandwidth for a given period of time, where after expiry time is represented by outside of the given period of time for a specified bandwidth ).

As per claim 64, Carr et al discloses :



wherein said method further comprises the step of scheduling provision of said one or more component processes, said step being carried out after receipt of said request for said composite service, (Col. 23, lines 11-22, scheduling by scheduling server).

As per claim 66, Carr et al discloses:

identifying component processes for use in provisioning the requested composite service, (Col. 17, lines 15-24, shows daemon process and slave process identified by connections to PC).

As per claim 67, Carr et al discloses:

Initiating one or more of said component processes identified for use in the requested composite service, (Col. 17, lines 15-24, forwarding addresses via a "connect" message).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carr et al (US 5,608,446).

As per claim 65, Carr et al fails to specifically disclose the following, however, does disclose first and second requests in col. 8, line 29-Col. 9, line 4, and therefore, it would be obvious to repeat the scheduling according to a service request based on conditions established under negotiations as described in independent claim 61, and as disclosed below:

re-schedule the component process; transmit a message to an entity which requested the composite service, indicating that ii) the composite service can only be provided under conditions different to previously established conditions for supply of said composite service; iii) re-assign the composite service to another service provider; or indicate to an entity which requested the composite service that the requested composite service cannot be provided

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to re-schedule the component process; transmit a message to an entity which requested the service, indicating that ii) the service can only be provided under conditions different to said previously established conditions; iii) re-assign the service to another service provider; or indicate to an entity which requested the service that the requested service cannot be provided, with the motivation of repeating a process for which multiple service requests have been received.

#### **(10) Response to Argument**

As per claims 53 and 61, appellant argues that Carr fails to disclose a system where negotiation takes place prior to receipt of a composite service request/negotiation

prior to receipt of a request for a composite service. However, Carr et al discloses providing negotiations in order to allocate bandwidth without causing overload conditions. In this case, a database working in conjunction with the negotiation means that includes the bandwidth capacity of each of the RF data channels of associated modulators is provided. Here, for the negotiation process, service providers are provided with an ongoing update of channel availability for each of the high speed RF channels available as shown in col. 9, lines 45-64. In this passage, Carr et al specifically shows that a service provider subsequently initiates a request for bandwidth allocation after the update of channel availability, or after the negotiation process. In addition, Carr et al discloses an ongoing update of channel availability, and therefore, this means that at some point in time, an update must occur before a request is made since the updates are ongoing, and continuously occur throughout the entire process. Since updates are part of the negotiation process, this means that negotiations take place before a request is made in Carr et al.

Appellant also argues that, a "specified" bandwidth clearly does not mean or disclose that an initial negotiation for bandwidth has been conducted. However, as disclosed in the preceding paragraph, Carr et al's disclosure of an ongoing update of channel availability in col. 9, lines 45-64 is the key point proving that negotiations occur before a request is made.

Appellant also argues that the request for bandwidth in Carr is an example of a request for an atomic (individual) service being dealt with by reference to some resource availability data, and that is unknown how a request to allocate bandwidth can

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be reasonably construed to teach or suggest a composite service request, one or more component processes being involved in the provision of the composite service as claimed. Appellant also argues that clarification be given for reciting "one out of the 6 bandwidths must be negotiated....". However, in Carr, negotiating involves allocating bandwidth, and as shown in Col. 10, lines 31-36, there is a *plurality* of 6 megahertz bandwidth RF channels to be made concurrently available. Therefore the request can be allowed based on 6 different bandwidths since users are permitted to receive high-speed signals over the cable television network via one of a selectable number of RF channels, and in order to make an allocation *one out of the plurality of 6 megahertz bandwidths* must be negotiated for each request, which therefore represents being composite.

Appellant argues that as per claims 54, 55, 62 and 63, the portions of Carr et al cited by examiner relates to allocating bandwidth in response to a request for bandwidth allocation, and does not disclose an expiry time of a condition. However, Col. 9, lines 53-62 of Carr et al discloses after expiration by disclosing outside of the given period of time for a specified bandwidth.

Finally, appellant argues that as per claim 65, it would not have been obvious to repeat scheduling in response to a response to a failure to schedule one or more component processes. Appellant argues that examiner's assertion that Carr et al's disclosure of 1<sup>st</sup> and 2<sup>nd</sup> requests making repeat scheduling obvious is incorrect since the 1<sup>st</sup> and second requests are different requests. However, both requests are done on the same system. Even though both the 1st and 2nd requests are different requests,

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the fact that the user makes these request from the same system means that a form of scheduling is being repeated for different processes, and therefore suggest that scheduling for the first request will fail in relation to scheduling for the second request, and therefore, scheduling for the second request must take place separately.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Akiba K Robinson-Boyce/

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